

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

---

Petition of the Cape Light Compact )  
and Various Member Towns Regarding )  
the Purchase of Street Lighting Equipment )  
from Commonwealth Electric Company )

---

D.T.E. 01-25

**REPLY BRIEF OF NSTAR ELECTRIC**

Submitted by:

Robert N. Werlin, Esq.  
John K. Habib, Esq.  
Keegan, Werlin & Pabian, LLP  
21 Custom House Street  
Boston, Massachusetts 02110

John Cope-Flanagan, Esq.  
Assistant General Counsel  
NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199

Date: May 11, 2001

## **TABLE OF CONTENTS**

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. ARGUMENT.....</b>	<b>2</b>
<b>A. “Unamortized Investment” Must Be Interpreted to Mean Accumulated Depreciation.....</b>	<b>2</b>
<b>B. The Company’s Methodology Avoids Cross Subsidies .....</b>	<b>4</b>
<b>C. The Company’s Method, Not the Compact’s, Is Consistent With the Company’s Accounting and Ratemaking Practices.....</b>	<b>5</b>
<b>D. The Company’s Proposal Is Simple, Understandable and Easily Applied .....</b>	<b>6</b>
<b>III. CONCLUSION .....</b>	<b>7</b>

	)	
Petition of the Cape Light Compact	)	
and Various Member Towns Regarding	)	D.T.E. 01-25
the Purchase of Street Lighting Equipment	)	
from Commonwealth Electric Company	)	
	)	

## I. INTRODUCTION

Commonwealth Electric Company d/b/a NSTAR Electric (“NSTAR Electric” or the “Company”) files this Reply Brief in the above-referenced proceeding. This Reply Brief responds to the initial brief filed by the Cape Light Compact (the “Compact”) on May 7, 2001 (the “Compact Initial Brief”). Because both the Company and the Compact had presented direct cases during the proceeding, the parties were able to address most disputed areas in their initial briefs. Therefore, in this Reply Brief, the Company will address only a few of the arguments contained in the Compact’s initial brief that require additional comment. However, silence on any issue should not be construed as agreement with any statement made by the Compact. As described in the Company’s Initial Brief, the Company’s methodology for calculating the price of streetlights to the towns of Edgartown, Harwich and Sandwich (the “Towns”) is consistent with G.L. c. 164, § 34A (“Section 34A”), which governs the sale of streetlights by electric companies to municipalities, as well as Department precedent, and should be approved by the Department.

## **II. ARGUMENT**

The Compact makes four general arguments in its initial brief. First, the Compact argues that its method is consistent with the statutory language, and the Company's method is not (Compact Initial Brief at 5-8). Then, it alleges that the Company's method is "unfair" to the municipalities (id. at 8-11). Third, it states that the Compact's method is consistent with the Company's practices, and the Company's method is inconsistent with its own practices (id. at 11-12). Finally, the Compact argues that its method is easy to apply and based on publicly available data, and that the Company's is complex and based on internal data (id. at 13-14). As described below, the Compact's arguments lack merit.

### **A. "Unamortized Investment" Must Be Interpreted to Mean Accumulated Depreciation**

As described in the Company's Initial Brief, the Compact's belated attempt to distinguish the concepts of amortization and depreciation cannot withstand scrutiny (Company Initial Brief at 8-11). The Compact's Petition and direct testimony clearly equate amortization with depreciation (id.; see Exh. Compact-1, at 3; Exh. PLC-5; Exh. Compact-1A (Exh. PLC-5 Revised)). The Compact's position is internally inconsistent in that it reads into Section 34A an explicit intent of the Legislature to use the "technical term" "unamortized investment" (Compact Initial Brief at 7), when that technical term is inappropriate for tangible plant such as streetlights.<sup>1</sup> As described in the Company's Initial Brief, the concept of amortization is applicable for "intangibles," and depreciation is the correct technical term to be applied for tangible assets (id. at 8-9; Exh. Compact-3).

---

<sup>1</sup> The Compact contradicts itself later in its brief when it states that "the Legislature knew that street lights are a depreciable asset, and that depreciation is accounted for in ratemaking proceedings" (id. at 11).

As noted by the Company, the Compact's interpretation would lead to the absurd result that the correct price would be the full original cost, since there has been no "amortization" of the investment (Company Initial Brief at 10).

Accordingly, both the Company and the Compact's witness recognize that streetlight assets are depreciated, not amortized, and they both used depreciation approaches to determine the undepreciated investment in the Towns' streetlights. The real question for the Department is which methodology properly computes that undepreciated plant.

As the Compact's witness testified, "the calculation of unamortized investment for purposes of purchasing street lights should tie into (and be consistent with) the company's traditional accounting practices for tracking 'original investment' and 'accumulated depreciation' for ratemaking purposes" (Exh. Compact-1, at 3 (emphasis added); Tr. 1, at 63-64). See also Petition of the Towns of Lexington and Acton, D.T.E. 98-89, at 3 (1998).<sup>2</sup> The Company demonstrated that its methodology reflects the application of group depreciation that has been used by the Company for years, has been approved by the Department in rate cases and is consistent with Federal Energy Regulatory Commission and accounting requirements. Commonwealth Electric Company, D.P.U. 89-114/90-331/91-80 (Phase One) at 53 (1991); Bay State Gas Company, D.P.U. 92-111, at 116-117 (1992); New England Telephone, D.P.U. 86-33-G

---

<sup>2</sup> Interestingly, in its initial brief, the Compact attempts to move away from the statement of the Compact's own witness by restating the assertion as follows:

...any system for ascertaining "unamortized investment" in the street lights should tie into and be consistent with *amortization* methods approved by this Department.

(emphasis added) Compact Initial Brief at 11. This late attempt by the Compact to recharacterize its testimony to support a new position is transparent and should be rejected by the Department.

at 273-276 (1989); Boston Gas Company, D.P.U. 88-67, at 154-155 (1988); see also Exh. CLC-1-11 (Att.), Exh. CLC-2-3 (Att.).

**B. The Company's Methodology Avoids Cross Subsidies**

Contrary to the arguments of the Compact (Compact Initial Brief at 8-11), it is the Compact's methodology that would create an unfair shifting of cost responsibility, not the Company's. As shown during the proceeding, the Compact's methodology of applying a unit depreciation concept to a group of assets would produce a shortfall for the Company's system-wide streetlight assets that would have to be paid for by other customers (see Exh. CLC-2-36). The Compact dismisses this cross-subsidy by arguing that any shortfall could be paid for through a system-wide charge, analogizing such a charge to those charges usually reserved for general costs, such as overhead expenses or low-income subsidies (Compact Initial Brief at 10-11, citing Western Massachusetts Electric Company, D.P.U. 90-300 and Western Massachusetts Electric Company, D.P.U. 88-250, at 130 (1989)). However, this argument is inapt because collecting an artificial shortfall for streetlight costs through an inappropriate "depreciation" calculation for a few municipalities would not result in general costs, but would create a new category of stranded costs that can be directly attributable to the municipalities that paid too little for the streetlights. In comparison, overhead expenses and low-income subsidies are not directly attributable to a particular class of customers.

In stark contrast, it is the Company's methodology that avoids cross-subsidies, by allocating the streetlighting group's accumulated depreciation reserve fairly to municipalities. As noted by the Company, it depreciates its streetlight assets only as a group and not on an individual unit basis (Tr. 1, at 135; Exh. JHA-1, at 7; Exh. CLC-2-15). Accordingly, the only proper means to determine the amount of depreciation

attributable to the Company's streetlights in the Towns is to allocate the Company's actual, system-wide streetlight depreciation reserve to the municipalities in question (Company Initial Brief at 4-6, 11-12).

The Company's methodology uses its actual streetlight depreciation reserve to perform this calculation, rather than the methodology advocated by the Compact, which inappropriately attempts to depreciate individual streetlights by unit in each of the Towns. Section 34A recognizes this reality by referencing that a municipality's acquisition of an electric company's streetlights can result only "upon the payment of the unamortized investment allocable to such acquired equipment." G.L. c. 164, § 34A(b). Therefore, in order to implement Section 34A properly, a methodology must be used that not only calculates the accumulated depreciation associated with the Company's streetlights, but also allocates such accumulated depreciation to the lights subject to sale. The Company's allocation methodology assigns streetlight costs to the Towns in a reasonable manner, using the Company's actual depreciation reserve, and should be approved by the Department.

**C. The Company's Method, Not the Compact's, Is Consistent With the Company's Accounting and Ratemaking Practices**

Perhaps the most incredible claim in this proceeding is the Compact's assertion that its method, and not the Company's, is consistent with the way streetlighting plant has been depreciated by the Company. As described above, the Company's valuation method reflects the fact that streetlighting assets are depreciated on a group basis and that, in order to determine the undepreciated cost of those assets in a particular municipality, it is necessary to allocate a portion of the accumulated depreciation reserve to those assets. This is fully consistent with the Company's accounting procedures, its Department-

approved depreciation studies and an allocation of its actual accumulated depreciation reserve that has been used for many years (Company's Initial Brief at 11-12, and record evidence cited therein).

Conversely, the Compact has selectively and inappropriately borrowed components of the depreciation calculation and applied them to contrive a desired result. It applies a remaining life, group accrual rate to individual units to arrive at "negative" values for all assets. As described in the Company's Initial Brief, this approach is both inconsistent with the Company's historical accounting for depreciation, and violates all accounting notions of how plant is to be depreciated.

**D. The Company's Proposal Is Simple, Understandable and Easily Applied**

The final argument offered by the Compact justifying its methodology is essentially that the Department should approve it merely because the approach is allegedly easier to understand than the Company's methodology (Compact Initial Brief at 14-16). There are two flaws in this reasoning. First, the Compact's "simple" methodology is simply wrong and produces inaccurate results. Moreover, there is nothing difficult about the Company's methodology.

The Company agrees that simplicity in ratemaking can be a virtue, but not when the "simple" approach is fundamentally flawed and inaccurate. As described above and in the Company's Initial Brief, the Compact's proposal results in erroneous and nonsensical calculations and does not correctly calculate undepreciated streetlighting assets. It does, however, result in the shifting of costs to other customers. This is not a case where a simple approach can be adopted because it roughly approximates a more accurate computation; here the simple approach leads to systematically inaccurate results.



The calculation of depreciation requires some expertise to perform, but this correct calculation is not unfathomable. In fact, Mr. Chernick was able to describe it at the hearing (Tr. 1, at 26-32) and provide an example of how it works (Exh. Compact-5). The Compact described the steps of the Company's calculation in its brief (Compact Initial Brief at 13). Thus, the Company did not present an impenetrable, unreviewable "black box" computation. Moreover, although information from the Company's books is needed to perform the calculation, such information is also necessary to perform the Compact's calculation. In the future, when a municipality asks the Company to compute the value of the streetlighting equipment, it will provide a calculation using a consistent methodology, which can be reviewed by the municipality or its experts.

Accordingly, the Compact's "simpler" calculation must be rejected because it is wrong, and the Company's accurate methodology must be accepted because it is reasonably simple, reviewable and it is the only approach that results in an accurate calculation.

### **III. CONCLUSION**

The Company has demonstrated that its methodology for valuing Commonwealth's streetlights in the Towns is consistent with Section 34A and approved accounting and ratemaking practices. Moreover, the Company's methodology will not result in other customers in its service territory bearing the costs of streetlights that should otherwise be attributable to the Towns. Accordingly, the Company requests that the Department approve both its methodology for valuing Commonwealth's streetlights in the Towns and the prices derived from such methodology presented to the Towns in December 2000.

Respectfully submitted,

**COMMONWEALTH ELECTRIC COMPANY**  
**d/b/a NSTAR ELECTRIC**

By its attorneys,

---

Robert N. Werlin, Esq.  
John K. Habib, Esq.  
Keegan, Werlin & Pabian, LLP  
21 Custom House Street  
Boston, Massachusetts 02110  
(617) 951-1400 (telephone)  
(617) 951-1354 (facsimile)

-and-

---

John Cope-Flanagan, Esq.  
Assistant General Counsel  
NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199  
(617) 424-2103 (telephone)  
(617) 424-2733 (facsimile)

Date: May 11, 2001